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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/773,834 | 02/06/2004 | Harvey Jay | J07-012 | 7171 |
| 7590 | 11/14/2005 | | EXAMINER | |
| R. Neil Sudol 714 Colorado Avenue Bridgeport, CT 06605-1601 | | | JOHNSON III, HENRY M | |
| | | ART UNIT | PAPER NUMBER | |
| | | | 3739 | |
| DATE MAILED: 11/14/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/773,834 | JAY, HARVEY | |
| | Examiner | Art Unit | |
| | Henry M. Johnson, III | 3739 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 02 February 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-33 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 06 February 2004 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the signal generator and second light source must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to under 37 CFR 1.83(b) because they are incomplete. 37 CFR 1.83(b) reads as follows:

When the invention consists of an improvement on an old machine the drawing must when possible exhibit, in one or more views, the improved portion itself, disconnected from the old structure, and also in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

The set of drawings submitted with the application omit any second light sources, signal generator or light sensitive goggles. Further, the specification lists three drawings, yet seven figures are included. It appears an improper drawing set was submitted.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action.

The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

On page 5, line 20, a "t" is needed in light-limiting.

On page 6, Figures 4-7 are not included.

Numerous drawing labels are incorrect due to not being in any drawings (see above).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-10, 13, 17 and 19-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3, 13 and 21 are indefinite, as the term "sufficient intensity" is not specifically defined in the specification. Light-limiting materials are available with varying degrees of sensitivity. Further, the disclosure indicates the activation may be done via a light on a sensor, such sensors also having variable sensitivities.

Claim 6 is indefinite, as light-limiting optical material has not been positively cited. The sensor has not been positively cited.

Claim 8 is indefinite, as light-limiting optical material has not been positively cited.

Claims 9, 10 and 13 are indefinite, as light-limiting optical material has not been positively cited. The sensor has not been positively cited.

Claim 15 is indefinite, as the sensor has not been positively cited.

Claim 19 is indefinite because the last paragraph is not clearly associated with the previous steps, but rather cites an inherent action of an optical material.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 14-19 and 28-32 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,815,749 to Tsukahara et al. Tsukahara et al. teach a light delivery device (camera flash) including a xenon discharge tube (Col. 5, line 43) as the main light (primary) source (Fig. 1, # 10) and a pre-light emission light (preliminary), also a xenon tube (Fig. 1, # 11) mounted in a housing (Fig. 4), the lens over the flash interpreted as an applicator. A computer unit (Fig. 1, # 1) is disclosed, the computer interpreted as control and as a signal generator as it clearly provides triggers for both lights, the pre-light being triggered 0.75 seconds before the primary light (Col. 27, lines 19-24). Tsukahara et al. discloses conservation of battery power by only energizing the pre-light at a brightness (intensity) necessary to evoke pupil reaction, thus implying an intensity lower than the main light source. Xenon bulbs produce incoherent light.

Regarding claims 15-18, a sensor has not been positively cited and the light from the pre-light is capable of detection by a photodetector. The pre-light is interpreted as the trigger and is inherently wireless.

Regarding claim 19, method steps of generating pulses, directing pulses, generating trigger and transmitting trigger are clearly disclosed by Tsukahara et al., the automatic response of a light-limiting material is inherent with no positive step associated therewith.

Claims 1, 2, 5 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,063,108 to Salansky et al. Salansky et al. disclose a light therapy device with an array of LED's (Col. 3, line 51) mounted in a case (Fig. 1), the LED's independently controlled by a microprocessor (Col. 5, line 25) that stores treatment data including the type of the light source, optical power, intensity, dose, frequency and pulse duration, wavelength and bandwidth, beam diameter and divergence, three-dimensional light distribution etc. which may be selected to provide an optimized protocol to treat the disorder (Col. 5, line 55 to Col. 6, line 6). The casing is interpreted as the applicator and the microprocessor is interpreted as a control unit and a signal generator as it is capable of both functions. Being independently controllable, any two LED's may be designated primary and preliminary source and their intensities are capable of being set such that the preliminary source has a lower intensity than the primary source. The microprocessor is capable of setting predetermined timings for the triggering of the LED's.

Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,986,639 to Chang et al. Chang et al. disclose an eye protection device configured as glasses with lenses that limit light transmission upon exposure to light. The inherent method of use is to place the glasses into position over a person's eyes. This inherently provides the window and disposes it at the eyes. The step of responding to light is inherent in the design.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,695,835 to Furuno et al. teach a light treatment device with an aiming beam and a treatment beam controlled by a microprocessor.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Henry M. Johnson, III whose telephone number is (571) 272-4768. The examiner can normally be reached on Monday through Friday from 6:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Henry M. Johnson, III
Patent Examiner
Art Unit 3739